August 18, 2008

Sharon L. Summers
Planning & Policy Development Unit
Division of Medicaid and Medical Assistance
1901 North DuPont Highway
P.O. Box 906
New Castle, DE 19720-0906

RE: DMMA Prop. Medicaid Acute Care Program Regulation [12 DE Reg. 123 (August 1, 2008)]

Dear Ms. Summers,

The Developmental Disabilities Council understands that the Division of Medicaid & Medical Assistance proposes to amend its eligibility standards for 30-day hospitalization/rehabilitation and out-of-state rehabilitation.

Under the regulation, an individual may be eligible for Medicaid coverage in an acute care hospital or rehabilitation facility if both medical and financial criteria are met.

Financially, there is a $2,000 countable resource limit. In general, income cannot exceed 100% of the Federal SSI standard. If an applicant is expected to enter a nursing home directly from the hospital or rehabilitation facility, countable income can be higher (250% of the Federal SSI standard).

The medical eligibility standards are more detailed. Moreover, the medical eligibility standards for out-of-state rehabilitation are stricter than for in-state rehabilitation.

We offer the following observations and recommendations.

First, in the "Income Guidelines" section, it is anomalous to adopt a more liberal income test for persons opting for nursing home placement directly from the hospital. Consistent with Olmstead and similar precedents, the State Medicaid program is expected to encourage alternatives to institutionalization. See attached January 14, 2000 CMS letter to State Medicaid Directors. It would therefore be preferable to authorize the higher income cap if an applicant were expected to enter a Medicaid waiver program. The superseded regulation (Section 20800.1) contemplated patients being discharged to the community with HCBS services. For example, a patient could be discharged to an assisted living facility and benefit from Medicaid assisted living waiver services. Eligibility for such waiver requires the applicant to meet a nursing level of care. See 16 DE Admin Code 20700.

Second, we question the categorical requirement that a participant in an out-of-state rehabilitation facility participate in "at least 3 hours of physical and/or occupational therapy per day". The preceding standards are more flexible in justifying eligibility based on intensive speech therapy, psychological services, or prosthetic-orthotic services. Someone recovering from a traumatic brain injury could conceivably focus on speech language therapy, cognitive retraining, and other sophisticated supports apart from OT and PT. We recommend deletion of the categorical eligibility requirement that the individual participate in 3 hours of OT and PT. It would be preferable to simply condense the standard as follows: "The individual must be able to tolerate and participate in required therapies and services." Since eligibility is reviewed on a "bi-weekly basis", there is ample scrutiny of active treatment.

The Developmental Disabilities Council thanks you in advance for your consideration of our remarks. Should you have any questions regarding these please contact our office at 739-3333.

Sincerely,

Jamie Wolfe
Chair

cc. Brain Injury Association of Delaware
Moss Rehabilitative Hospital
Bryn Mawr Hospital
McGee Rehabilitative Hospital
State Council for Persons with Disabilities
Governor's Advisory Council for Exceptional Citizens